

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

19,570

FILE: B-194945

DATE: June 19, 1979 *Request for*

MATTER OF: General Services Administration-*[Advance Decision, Assignment of Claims Act]*

DIGEST:

under the the

Government contractor's secured note assigning accounts receivable to financial institution which was executed during the period the instant Government contract was being performed, should be recognized under Assignment of Claims Act. Record includes contractor's schedule of accounts receivable which lists the instant contract account.

AGC 00017

The General Services Administration (GSA) requests an advance decision concerning the proper payee under GSA contract No. GS-02S-29880 with Teltronis Services, Inc. (Teltronics). GSA, having received performance from Teltronics, is now in the position of stakeholder ready to make payment, but is uncertain as to the proper payee. This uncertainty stems from a claim of the Sterling National Bank and Trust Company of New York (Sterling) that it should be the payee by virtue of an agreement in which Teltronics allegedly assigned the proceeds from this Government contract to Sterling. The validity of this assignment under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 203 (1976) and 41 U.S.C. § 15 (1976) (hereafter referred to as the Act) is the determinative issue here.

Background

On May 1, 1978, GSA awarded to Teltronics a contract for the installation and maintenance of a communications system at Floyd Bennett Field, Brooklyn, New York. Upon completion of installation, Teltronics submitted to GSA on May 4, 1979, an invoice for payment in the amount of \$519,678.00. Previously, on March 16, 1979, Sterling asserted its claim to any payment under the instant contract by notifying GSA's contracting officer that it was

Identify

claims

005626

Accounts receivable payable

*Maintenance services contract
Questionable payment
Contractor*

*DLG-01802
DLG-01864*

assignee of all Teltronics' accounts receivable. As evidence of this assignment, Sterling submitted a Security and Assignment Agreement, dated July 19, 1976, in which Teltronics agreed to the following terms:

"FOR VALUE RECEIVED, and in consideration of loans or extensions of credit made to the Undersigned [Teltronics], as evidenced by any notes, guarantees or other evidence of indebtedness executed by Undersigned, the Undersigned hereby grants a security interest in sells, assigns, transfers, deposits, pledges and sets over to the Bank [Sterling] all its right, title and interest in and to each and every account of the Undersigned now owned or hereafter arising and all moneys now due or hereafter to become due thereon * * *."

On March 22, 1979, GSA informed Sterling that the assignment was not in compliance with the Assignment of Claims Act and GSA was therefore unable to honor the request for payment. In particular, GSA noted that the 1976 Teltronics/Sterling agreement did not refer to any specific Government contract, was not a certified copy, and was entered into approximately two years prior to the date of the contract in question. Sterling resubmitted its notice of assignment on April 3, 1979, and, again, it was rejected by GSA on April 4, 1979, as an assignment not conforming to the requirements of the Act.

Subsequently, Sterling requested a Temporary Restraining Order in the United States District Court for the Southern District of New York. On April 17, 1979, the court entered an order which: (1) restrained GSA from paying Teltronics any funds due under the subject contract; and (2) required any funds which may become payable thereunder to be paid into court. By Order to Show Cause, Sterling commenced a proceeding seeking a preliminary injunction to prevent GSA from paying Teltronics monies due under the contract and to require Teltronics to execute any documents necessary for Sterling to obtain payment directly from the Government. Upon motion of the court and after testimony was

heard, the court dismissed the action for lack of subject matter jurisdiction on May 7, 1979.

On May 8, 1979, Sterling renewed its request to GSA that the assignment be recognized. As additional support for its position, Sterling submitted a copy of a corporate resolution of Teltronics, dated July 19, 1976, which authorized the execution of the 1976 assignment. Further, Sterling provided a portion of the transcript of the April 20, 1979 hearing in the previously mentioned court action in which a Teltronics Vice-President testified that the Floyd Bennett Field contract account receivable had been assigned to Sterling.

Upon receipt of this renewed request from Sterling, and having possession of other documents tending to demonstrate the establishment of a line of credit extended to Teltronics during the performance of this contract, GSA sought our advice in this matter. GSA's primary area of concern is that the 1976 security agreement submitted by the bank predated the Government contract by nearly two years and is a blanket security agreement which does not necessarily require the Teltronics accounts receivable to be paid to the bank.

Discussion

The Act permits the assignment to a bank, trust company, or other financing institution of monies due under a Government contract. Assignees, however, must comply with the requirements for written notice of assignments stated in the Act, as follows:

" * * * file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, in connection with such contract; and (d) the disbursing officer, if any, designated in such contract to make payment."

The Security and Assignment Agreement of July 19, 1976, between Teltronics and Sterling is best characterized as a blanket security agreement because of its general terms with no reference to any specific contract and because it covers a variety of security interests in the debtor's current and future accounts receivable. Moreover, it predates the instant contract by nearly two years and therefore it does not evidence that the bank was providing financing at the time this Government contract was executed or being performed. GSA states that the Act has been interpreted as requiring the assignment to reference a specific Government contract or that there must be a recognition, on an invoice or purchase order, by the contractor that an assignee should be paid monies due under the contract. In this regard, the agency cites First National City Bank v. United States, 548 F. 2d 928 (Ct. Cl. 1977) and prior decisions of this Office. GSA also quotes from the cited court case wherein the court, in effect, stated that under the Act a proper assignee was confined to a lender whose loan was used, or was available for use, in financing the particular Government contract.

However, the question there was whether the set-off protections of the Act were available to the assignee bank. The court noted that Congress did not intend to eat into the Government's normal right of set-off against an assignor more than would be necessary to induce monetary aid in performing a contract. There is no question of set-off in this case, the Government being a mere stakeholder and the contractor demanding direct payment without contesting the authenticity of the assignment of the instant account. We are aware of no requirement for the Government to ascertain the purpose of the loan before recognizing an assignment of contract payments over the contractor's conflicting demands for direct payment. In such circumstances it is enough that the Government assure itself of the assignment's authenticity and its applicability to the contract right involved here. Moreover, the fact that the Government contract may have been only one of many accounts assigned by

Teltronics to Sterling would not invalidate an assignment under the Act. In accord with the modern trend away from tying a particular loan to a particular security, the use of a revolving credit financing device has been regarded as acceptable under the Act. Continental Bank & Trust Co. v. United States, 416 F. 2d 1296 (Ct. Cl. 1969).

In this connection, we have held that an assignment of a claim against the Government should specify the particular contract involved, and, therefore, that a blanket assignment does not meet the requirements of the Act where the Government seeks to set off a tax indebtedness. See B-120222, October 27, 1955. We have noted in one decision that the lack of specificity of a blanket agreement can be cured for purposes of perfecting a valid assignment under the Act when "there are in existence later amendment schedules [specifying the Government contract] signed by the assignor, which purport to be an integral part of the original [blanket] assignment instrument." B-171125, February 4, 1971. GSA has provided us documentation in addition to the 1976 agreement which raises the possibility that there may be sufficient documentation of a valid assignment applicable to the instant contract payment.

It appears from the documents subsequently submitted here by GSA that during the period of performance of the Floyd Bennett Field contract, Sterling loaned Teltronics \$1 million. This is evidenced by a secured note dated December 29, 1978, and executed by the Treasurer and Vice-President of Teltronics. By the terms of the note, Teltronics granted a security interest in and assigned all accounts receivable to Sterling. (This note also refers to the 1976 blanket agreement as a matter of collateral security for the loan.) In the documentation we received, a schedule of Teltronics' accounts receivable lists the Floyd Bennett Field contract account. Assuming that GSA concludes that the December 1978 secured note is an authentic document, we believe it should be recognized as an assignment under the Act. Nevertheless, because of the controversy in this matter the bank should be required to indemnify the

Government from any claims that might be made by the contractor. The bank may be paid upon satisfaction of these requirements.

R. F. Keller.

Deputy Comptroller General
of the United States